IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5625 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDUBEN KISHANBHAI ADODIYA

Versus

DISTRICT MAGISTRATE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR HL JANI LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dtd. 12th July, 1999 passed by the District Magistrate, Bhavnagar, whereby the petitioner was detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985. The petitioner is under detention at Central Jail, Sabarmati, Ahmedabad. The detention order is already confirmed by the Board .

2. The grounds of detention enclosed with the detention order show that nine cases under Prohibition Act were registered against the petitioner at B-Division Police Station, Bhavnagar during the period 12th January, 1999 to 9th June, 1999. Out of the nine cases, in four cases, chargesheets have been filed and the trial is pending and in rest of the five cases, investigation was still going on at the time when detention order was passed. The allegation against the petitioner is that he is engaged in the business of unauthorised liquor as a bootlegger. Besides this, the detaining authority has recorded statements of the three witnesses made on 4th July, 1999 against the petitioner to show that the petitioner is engaged in the anti-social activities, had abused the witnesses had beaten the witnesses and had also done the act of violence against the witnesse damaging their Rickshaw etc. It has also been stated that the witnesses are not prepared to disclose their identity and come out openly against the petitioner out of the atmosphere of fear created by her and the petitioner is continuing with her anti-social and bootlegging activities. Since the witnesses have requested to keep their identity secret, the provisions of Sec. 9(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, have been invoked.

3. The learned counsel for the petitioner has argued that it is not a case of breach of public order. Learned A.P.P. Mr. Jani has not been able to show as to how the activities of the petitioner can be taken to be a case of breach of public order.

4. According to the several decisions of the Supreme Court, it is clear that even if all the allegations levelled against the petitioner in the ground on which the detention order has been passed, are taken to be correct, on their face value, it does not constitute a case of breach of public order. The ingredients of breach of public order are wanting. In absence of breach of public order, the detention order cannot be sustained. At the most it may be a case of breach of law and order and for that detention order cannot be held to be lawful. In the facts and circumstances of the case, the detention order cannot be sustained in the eye of law. The impugned detention order dtd. 12th July, 1999 passed by the District Magistrate, Bhavnagar, is hereby quashed and set aside. It is directed that the petitioner--detenu Adodiya Induben Kishanbhai be released forthwith, if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

****

rafik